



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
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ATTORNEY GENERAL

February 3, 1939

Hon. R. L. Daniel, Chairman
Board of Insurance Commissioners
Land Office Building
Austin, Texas

Dear Sir:

Opinion No. 0-222

Re: Whether the Board of Insurance
Commissioners should have joint
control over sums of money in
excess of \$60,000.00 of a
Lloyds Insurance Co.

Your letter of January 24th, 1939 to this department, wherein you ask a question with respect to the joint control of the Board of Insurance Commissioners and the Attorney-In-Fact of a Lloyds Insurance Company, has been referred to the writer for attention.

In order that the basis for your question and the answer herein given might be better understood by all affected by this opinion, we set out the pertinent parts of your letter, which are as follows:

"Article 5017 provides that before an attorney-in-fact can be licensed for underwriters at a Lloyds, a deposit of at least \$60,000 in cash, or convertible, admissible securities shall be put up on contributed, and that no attorney-in-fact shall be licensed to transact more than one kind of business under this Chapter, unless the net assets, as defined, belonging to such underwriters at Lloyds, shall be as much as \$10,000 additional for each additional kind of insurance designated in the application for license. Article 5017e provides for the joint control by the attorney-in-fact for the underwriters and the Board of Insurance Commissioners of the assets of the organization.

The ENGLISH AMERICAN LLOYDS of San Antonio has heretofore placed \$60,000 under joint control of the Board of Insurance Commissioners and the attorney-in-fact for said company. Said organization now desires to contribute \$10,000 more to its assets and wishes to be licensed to write an additional line of insurance. However, they are taking the position that this additional \$10,000, over and above the \$60,000 previously placed under joint

control, is not required to be under the joint control of the Board of Insurance Commissioners and the attorney-in-fact.

Since the statute is not quite clear as to what it means the question which arises is: why should the contribution of the additional \$10,000 be considered at all if the Board has no control over it? We will ask you to please give us your opinion as to whether or not the additional \$10,000, over and above the \$60,000 now under joint control, which the company now desires to place in its assets for a permit to write one additional line should also be placed under the joint control of the Board of Insurance Commissioners and the attorney-in-fact for the organization, or is it sufficient for the underwriters to show that they have this additional \$10,000 in the hands of the attorney-in-fact?"

The question submitted involves not only a construction of Articles 5017-5017e of our statutes, but requires that we ascertain the legislative intent in the passage of all the articles incorporated in Chapter 19, Revised Civil Statutes of Texas of 1925.

Article 5017 reads as follows:

"No attorney shall be licensed for the underwriters at a Lloyd's under this chapter unless the net assets, including the guaranty fund contributed to the attorney, a committee of underwriters, trustees or other officers as provided for in the articles of agreement, shall be at least sixty thousand dollars in cash, or convertible, admissible securities; nor shall any attorney be licensed for any underwriters at a Lloyd's to transact more than one kind of business as defined in the third article of this chapter, unless the net assets, as they are herein defined belonging to such underwriters at Lloyd's, shall be as much as ten thousand dollars additional for each additional kind of insurance designated in the application for license."

Article 5017e is the only article of our statutes providing for and establishing joint control over funds of a Lloyd's and reads:

"The assets of underwriters at a Lloyd's to the extent of the minimum required under the provisions of this chapter shall be submitted to and subjected to the joint control of the attorney-in-fact for such underwriters and the Board of Insurance Commissioners, in some manner satisfactory to the Board, so that the same may not be withdrawn or diverted, or expended, except with the approval of the Board and the purposes provided for in this chapter. Such underwriters, however, shall be

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entitled to the interest or income accruing from such property or securities as may be placed under the joint control of such attorney in fact and the Board as and when the same is payable. Provided, however, in lieu of such joint control any attorney in fact at a Lloyd's now doing business in this State may give bond in the sum of twenty-five thousand dollars for the safe keeping of assets, to be released only on approval of the Board of Insurance Commissioners, and in such form and with co-operate surety as shall be approved by the Board of Insurance Commissioners."

It will be noted that such joint control is provided for "to the extent of the minimum under the provisions of this chapter." The minimum established by Article 5017 is \$60,000, but to what type of company is the minimum of \$60,000 applicable? The very language in Article 5017 makes it clear that such minimum of \$60,000 is applicable to a company limited to writing one kind or line of insurance. Before it can be licensed to write an additional line of insurance, it must be shown that the attorney-in-fact has in his possession an additional net sum of \$10,000 over and above the \$60,000 required to write one line of insurance. Thus, if a company is to write two lines of insurance, the minimum required before a license can be issued by the Board of Insurance Commissioners, is \$70,000. If three lines are to be written, the admissible assets including the guaranty fund, must total \$80,000. This increase of assets in amounts of \$10,000 per line continues until every kind or line of insurance enumerated in, and not otherwise prohibited by Article 5015, may be written. In each of these cases the amount of minimum required is limited and controlled solely by the number of lines of insurance to be written.

The very purpose of the Legislature, in providing joint control of the assets of such company, was manifestly to create a safeguard, by which the assets so contributed regardless of the amounts thereof, could be held secure for the benefit of the policyholders. In carrying out such purpose, they provided by Article 5017e, for joint control to the extent of the minimum established.

It is, therefore, the opinion of this department, and you are so advised that the \$10,000.00 over and above the \$60,000.00, now under joint control, which the ENGLISH AMERICAN LLOYDS of San Antonio proposes to contribute for the purpose of securing a license to write another line of insurance, must be placed under the joint control of the attorney-in-fact and the Board of Insurance Commissioners.

Trusting that this answers your inquiry, we are

APPROVED:
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Yours very truly
ATTORNEY GENERAL OF TEXAS
By /s/ Lloyd Armstrong
Assistant

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